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Situation of human rights in Cambodia

Report of the Special Representative of the Secretary-General for Human Rights in Cambodia, Mr. Thomas Hammarberg, submitted in accordance with Commission resolution 1997/49

Report of the Secretary-General

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Introduction

1. The Special Representative of the Secretary-General for human rights in Cambodia was appointed pursuant to the Commission on Human Rights resolution 1993/6 of 19 February 1993 to undertake the following tasks:

(a) To maintain contact with the Government and people of Cambodia;

(b) To guide and coordinate the United Nations human rights presence in Cambodia;

(c) To assist the Government in the promotion and protection of human rights.

2. In 1996 the Secretary-General appointed Thomas Hammarberg from Sweden as his Special Representative for human rights in Cambodia. Since he assumed the functions of Special Representative in May 1996, Mr. Hammarberg has undertaken seven official missions to Cambodia and reported to the Commission on Human Rights (E/CN.4/1997/85) and the General Assembly (A/51/453, A/52/489).

3. The Commission on Human Rights, in resolution 1997/49 of 11 April 1997, took note with appreciation of the Special Representative's report on the situation of human rights in Cambodia, in particular his concerns about the independence of the judiciary, the problem of impunity, the ill-treatment of prisoners, labour rights, child prostitution and trafficking, freedom of expression and the promotion of an effective functioning multi-party democracy.

4. The Commission expressed serious concern about the problem of impunity and encouraged the Government to repeal article 51 of the 1994 Law on Civil Servants. The Commission called upon the Government to investigate cases of violence and intimidation directed at political parties and their supporters, as well as against media personnel and offices, and to bring to justice those responsible.

5. The Commission strongly condemned the violence in Phnom Penh on 30 March 1997 against a peaceful and lawful opposition rally, and called upon the Government of Cambodia to take immediate measures to uphold the rule of law in order to prevent the recurrence of such an outrage and to bring the perpetrators to justice.

6. The Commission requested the Secretary-General, through his Special Representative for human rights in Cambodia, in collaboration with the Office of the High Commissioner for Human Rights, to examine any request by Cambodia for assistance in responding to past serious violations of Cambodian and international law. The Secretary-General was also requested to report to the Commission at its fifty-fourth session on the recommendations made by the Special Representative on matters within his mandate.

7. The present report is submitted pursuant to that request and is based on the sixth and seventh missions of the Special Representative in December 1997 and January 1998. The report was finalized in early February 1998.

8. Since the meeting of the Commission on Human Rights in April 1997, the General Assembly adopted resolution 52/135 on the situation of human rights in Cambodia in which it requested the Secretary-General, through his Special Representative, to assist the Government of Cambodia in ensuring the protection of the human rights of all people in Cambodia. The Assembly took note with appreciation the report of the Special Representative (E/CN.4/1997/85), in particular his concerns about the problem of impunity, the independence of the judiciary and the establishment of the rule of law, the use of torture, the administration of prisons and the ill-treatment of prisoners, and child prostitution and trafficking.

9. The Assembly expressed grave concern about the serious violations of human rights during the armed violence of early July 1997 and its aftermath and urged the Government of Cambodia as a high priority to investigate thoroughly and impartially and to bring to justice those responsible for such serious crimes. The Assembly also urged the Government to take action to identify and bring to justice the perpetrators of the 30 March 1997 violence against a peaceful and lawful opposition rally.

10. The Assembly strongly urged the Government to promote and uphold the effective functioning of multi-party democracy, including the right to form political parties, stand for election, take part freely in a representative Government, freedom of expression, as well as the right to information. The Assembly expressed support for the role of the United Nations offices in monitoring the return of political leaders currently outside the country and their unfettered resumption of political activity.

11. The Assembly endorsed the comments of the Special Representative that the most serious human rights violations in Cambodia in recent history had been committed by the Khmer Rouge and noted with concern that no Khmer Rouge leader had been brought to account for his crimes. The Assembly requested the Secretary-General to examine the request by the Cambodian authorities for assistance in responding to past serious violations of Cambodian and international law, including the possibility of the appointment, by the Secretary-General, of a group of experts to evaluate the existing evidence and propose further measures, as a means of bringing about national reconciliation, strengthening democracy and addressing the issue of individual accountability.

I. SIXTH AND SEVENTH MISSIONS OF THE SPECIAL REPRESENTATIVE OF THE SECRETARY-GENERAL FOR HUMAN RIGHTS IN CAMBODIA

A. Sixth mission, 30 November-6 December 1997

12. The principal objective of the sixth mission was to inform the Government of the General Assembly discussions and resolution on the human rights situation in Cambodia and to assess progress made in the investigations of the 30 March 1997 grenade attack against a peaceful demonstration in Phnom Penh and the extrajudicial executions which occurred during and after the violent events in July 1997.

13. The Special Representative met with a wide range of people, including the co-Minister of Interior, H.E. Mr. Sar Kheng, the Director of National

Police, Mr. Hok Lundi, the President of the National Assembly and Chairman of the Cambodian Peoples Party (CPP), Mr. Chea Sim, the advanced fact-finding team of exiled members of Parliament and several other MPs already in Phnom Penh, several Ambassadors of Western and Association of South-East Asian Nation Countries, non-governmental organizations and experts working on the preparation of the elections, and NGOs working on the rights of children and women. The Special Representative held discussions with the Representative of the Secretary-General in Cambodia, Mr. Lakhan Mehrotra, the United Nations Resident Coordinator, Mr. Paul Matthews, and the staff of the Cambodia office of the High Commissioner for Human Rights, including a meeting with its provincial offices. The Special Representative also met with the United States Assistant Secretary of State for Democracy, Human Rights and Labour, Mr. John Shattuck, who was on a three-day mission in Cambodia. The Special Representative also briefed a visiting delegation from the German Bundestag.

14. At his meetings, the Special Representative explained the recently adopted General Assembly resolution and its historical reference to the atrocities committed under the Khmer Rouge regime and the commitment of the international community to assist Cambodia to address the problem of impunity. The Special Representative indicated that he would be recommending to the Secretary-General three prominent international jurists to form a team of experts. This team of experts would undertake the first important step in the process by assessing the legal strength of the evidence existing in Cambodia and making recommendations to the Secretary-General for further action. During his mission, the Special Representative twice visited the Documentation Centre of Cambodia, where he was given an overview of the existing documents from the Khmer Rouge period and held discussions with the Director of the Centre.

15. With regard to the 30 March grenade attack, the Special Representative met with the chairman of the investigation commission, Gen. Hok Lundi, and expressed regret that eight months after the grenade attack, little progress had been made in the investigation. The Special Representative was informed that the United States Federal Bureau of Investigation (FBI) would be invited back to Cambodia to cooperate with the Government on further investigations. The Special Representative also took note of promises from the Director of National Police that action would be taken on the cases of torture in Battambang province which had been transmitted to the Government in June 1997 and the incident of armed interference by the police in the court in Banteay Meanchey province.

16. The Special Representative regretted to learn that the investigation into the 41 cases of extrajudicial killings documented in a memorandum submitted to the Cambodian Government in August 1997 had not even started. The Special Representative was unable to obtain a meeting with the Minister of Justice to discuss this problem. The Special Representative recalled the firm commitment expressed by Second Prime Minister Hun Sen during their meeting in September 1997 that thorough investigations would be carried out and that no one would enjoy impunity. The Special Representative stated that the Cambodian people and the international community deserved an explanation why it was impossible, for example, to find those responsible for the summary

execution of Ho Sok, Secretary of State of the Ministry of Interior, hours after his arrest on 7 July 1997 while he was on the premises of the Ministry.

17. The Special Representative requested the Government to provide a progress report by the end of the year on the investigations into the 30 March grenade attack and the 41 cases of extrajudicial killings.

18. The Special Representative linked the problem of impunity with the organization of free, fair and credible elections. He expressed the view that the lack of action and progress in the investigations of politically motivated killings would be a bad omen for free and fair elections. With regard to equal access to the media and a free atmosphere for political activities, the Special Representative observed that the electronic media especially continued to be dominated by the CPP and that there was little visible indication, such as party signboards, of the existence of political parties in the provinces other than the CPP. As to the legislative framework for the elections, the Special Representative learned about the progress being made by the National Assembly. The Special Representative met with the advance team of returning parliamentarians and discussed with them the upcoming elections, including matters such as the legislative framework, access to the media, and the problem of impunity.

19. The Special Representative was briefed by NGOs working in the area of children's rights on the recent police efforts in cracking down on prostitution in Phnom Penh and on some of their concerns about the effectiveness of the approach. The Special Representative met with representatives of women's organizations and discussed the situation of the human rights of women. The right to education, the right to health, particularly reproductive health, violence against women, and women's participation in political life were identified as areas of priority concern. The Special Representative indicated that he would continue to follow and report on the situation of women's rights.

20. The Special Representative visited the PJ (police judiciaire) prison in Phnom Penh and talked with prisoners, including Srun Vong Vannak, the former security chief of the Khmer Nation Party. Mr. Vannak was accused of involvement in the murder of the brother-in-law of the Second Prime Minister and was sentenced to 13 years imprisonment in September 1997 in a trial which did not meet the requirements for fairness.

21. The Special Representative took note of some positive developments: the approval and submission of three reports to human rights treaty bodies, the Committee on the Rights of the Child (CRC), the Committee on the Elimination of Racial Discrimination (CERD) and the Human Rights Committee, the convening of the first meeting of the Supreme Council of Magistracy in December 1997, and the progress made in the electoral process.

B. Seventh mission, 18-30 January 1998

22. The main purpose of the seventh mission, one month after the previous one, was to find out if there had been progress on the investigations of politically motivated crimes, including the 30 March attack and the 41 cases

of extrajudicial executions. The mission was also to coincide with the three-day visit to Cambodia of the High Commissioner for Human Rights.

23. In accordance with his mandate to maintain contact with the Government and people of Cambodia, the Special Representative met with a wide range of people, including senior government officials, members of Parliament, leaders of political parties, including some in exile in Bangkok, representatives of civil society and the media. The Special Representative discussed a broad range of human rights issues with H.E. Mr. Chea Sim, the acting head of State, H.E. Mr. Ung Huot, H.E. Mr. Chem Snguon and H.E. Mr. You Hokry, representing the Royal Government, H.E. Mr. Kieu Khanarith, the Secretary of State for Information, Mr. Chea Sophara, Deputy Mayor of Phnom Penh, Koh Kong provincial officials, as well as human rights NGOs, trade union groups and student groups.

24. The Special Representative held discussions with the Representative of the Secretary-General, the United Nations Resident Coordinator, and the heads of United Nations agencies and programmes operating in Cambodia. The Special Representative briefed the diplomatic corps in Cambodia and the European ambassadors in Bangkok.

25. Issues discussed at the Special Representative's meetings focused on the problem of impunity, the organization of the elections, the exploitation of prostitution of women and children, the problem of trafficking in persons, and labour rights.

26. The Special Representative expressed serious concern about the grave consequences of the delay in the investigations of the cases of extrajudicial executions and the 30 March 1997 grenade attack. In response to the Second Prime Minister's criticism of his memorandum of 21 August 1997 concerning evidence of summary executions, torture and missing persons, the Special Representative nevertheless concluded that the figure of 41 executions was still valid; three persons listed as reportedly missing had been traced. The Special Representative emphasized the responsibility of the Government to conduct thorough investigations and bring those responsible to justice. He welcomed the Government's acceptance of an international expert to provide advisory assistance to its investigation and prosecution process.

27. The Special Representative welcomed the Government's continuous commitment to address the gross human rights violations committed during the Khmer Rouge regime from 1975 to 1979. The Government welcomed the proposal that a team of experts should come to examine the existing evidence from a legal perspective as a first step in the process. The composition of a high-level group of experts is under consideration by the Special Representative, who will be making recommendations to the Secretary-General.

28. The Special Representative discussed the upcoming elections rescheduled for 26 July 1998, with government representatives, NGO election coalitions, members of Parliament and political parties, electoral experts and representatives of donors. The Special Representative stated that much remained to be done to create an atmosphere conducive to free, fair and credible elections, including investigations and prosecutions of political killings and ensuring fair access to the media. The Special Representative

welcomed the adoption of the relevant laws and the establishment of the National Electoral Committee (NEC, equivalent to an electoral commission) by the National Assembly. He stressed the urgency of establishing the Constitutional Council and urged that every effort be made to enable the NEC to function independently and impartially.

29. With regard to the exploitation of the prostitution of women and children, the Special Representative met with the Deputy Mayor of Phnom Penh and also talked with a number of NGOs working for the protection of children and women's rights. The Special Representative noted the recents effort of the Government in cracking down on brothels in major cities and its increasing cooperation with NGOs working on combating the exploitation of prostitution and trafficking of women and children. The Special Representative expressed the need for a comprehensive and long-term strategy so that the crack-down efforts did not result in driving the problem underground. The Special Representative learned that large-scale prostitution still existed in covert forms such as dancing and karaoke clubs, where prostitutes were rendered even more vulnerable without access to NGOs and health workers. The Special Representative was alarmed by the increasingly high rate of HIV/AIDS infection among prostitutes and noted the important role of education in this regard. He discussed with United Nations agencies and other international organizations about joining their efforts to combat the exploitation of the prostitution of and trafficking in women and children.

30. The Special Representative travelled to the Province of Koh Kong, where he met with the Provincial Police Commissioner, the Deputy Military Commander and the Governor. He raised the issue of the illegal detention of two members of the National United Front for an Independent, Neutral, Peaceful and Cooperative Cambodia (FUNCINPEC) at the provincial military base and the trafficking in persons to Thailand for labour exploitation carried out by an organized network. The Special Representative stressed that the military had no authority to carry out arrest and detention; this rested solely with the police on the basis of instructions from the judicial authorities. The Special Representative underlined the importance of human rights training for the military and the police. The Governor assured the Special Representative of his continued cooperation with human rights organizations. The two persons detained by the military were immediately released.

31. The Special Representative was briefed by workers' representatives from several foreign-owned garment factories about the worsened working conditions in those factories since July 1997. Workers, especially labour activists, were subject to constant threats of dismissal and often humiliation and insults from the security at the factories. In some factories there was a permanent presence of police and military who were hired by the management. Workers were forced to work excessive overtime, including holidays, often without extra pay. Internal rules used by the management to justify the dismissal and punishment of workers were not made known to the workers. The Special Representative emphasized the importance of the internationally recognized rights to organize trade unions, to make complaints, and to negotiate. The Special Representative intends to bring the present report to the attention of the International Labour Organization (ILO).

II. ISSUES OF SPECIAL CONCERN

A. Preparations for elections and freedom of expression

32. In a comment of 18 November 1997 on the General Assembly report, the Royal Government gave information about progress made in creating the necessary legal framework to hold elections. At that time the law on political parties had been adopted by the National Assembly and the election law was being debated. The latter law was adopted in late December 1997. Since then the National Electoral Committee has been established and its members confirmed by the National Assembly. Presently, a proposed law for the creation of the Constitutional Council has been submitted to the National Assembly but not yet approved. The Constitutional Council will be important in the electoral process in relation to disputes.

33. The discussions in the National Assembly on the law on political parties and the election law resulted in several positive amendments to the drafts prepared by the Council of Ministers. However, some provisions may still be problematic. An applicant political party would need 4,000 signed-up members in order to be registered, which may be perceived as a violation of the constitutional right to form a party. This particular requirement has been made more demanding by a Ministry of Interior instruction that some additional data such as their professions must be given about the 4,000 members.

34. The law on political parties, furthermore, seems insufficiently clear about what activities can be undertaken by parties which have applied for registration but have not yet been formally cleared. Although instructions were given in February 1998 by the Ministry of Interior to territorial authorities and to police to protect political parties, those instructions were limited to parties which have already registered and been recognized. A political party in the process of registering is allowed under the Constitution and the law on political parties to campaign, display signboards and organize rallies in order to recruit members. Political parties must also be free to distribute membership cards as they need to mention the serial number of the membership cards on the list of 4,000 signatures to complete the submission for registration.

35. Competing factions of split parties claim the right to use the original party name and logo. The Ministry of Interior has taken the view that such disputes must be resolved in court, though others have argued that such issues could be brought to the Constitutional Council. The combination of the need to register a party and the lack of clarity in some cases about which group can use established party names and how such disputes should be resolved has caused understandable confusion among some political groupings.

36. The National Electoral Committee is important for the protection of the freedom and fairness of the election: it must therefore be genuinely independent. Under the election law, the NEC has the following membership: President, Vice-President, two citizen representatives, one representative of each of the four political parties having a seat in the National Assembly, two high-ranking officials of the Ministry of Interior and one NGO representative. Unfortunately, appointments were not decided upon in an atmosphere of consensus. The impartiality of the NEC has been questioned following

allegations of unfair methods in the election of the NGO representative and partisan nominations for the party representatives of FUNCINPEC and the Buddhist Liberal Democratic Party (BDLP). The National Assembly approved the composition of the NEC without any discussion on the complaints submitted by the two main NGO election monitoring coalitions, a student group, the Secretary-General of FUNCINPEC and a member of parliament of the Son Sann faction of the BDLP.

37. The Special Representative welcomes the fact that the NEC will operate as a permanent body, which may enhance its independent status. As for the provincial and communal electoral committees, he recommends that the NEC specify in the regulations the participation of each group - citizens, civil servants and local authorities - in order to avoid unbalanced and politically biased committees.

38. Concern has also been expressed to the Special Representative about the rules for ballot counting. According to the election law the ballots will be counted on the site of the polling station which may make voters fear that the true confidentiality of the ballot is not guaranteed. The Special Representative recommends action to address this problem.

39. A particular concern relates to the provision in the election law that non-rehabilitated convicted prisoners could not stand as candidates. The concept of "rehabilitation" is not clearly defined in this context. For instance, different opinions have been expressed on whether a royal amnesty is a form of "rehabilitation". Moreover, persons in prison, including in pre-trial detention, cannot register as voters and will therefore be barred from running as candidates as well. These regulations and their lack of clarity may be misused in order to prevent certain politicians from taking part in the election.

40. A major problem is related to the possibility for exiled politicians to take part in the 1998 elections. The Inter-Parliamentary Union (IPU) through its procedures has stated its concern about the treatment of members of the National Assembly. H.E. Mr. Ung Huot and H.E. Mr. Hun Sen wrote to the Secretary-General in October 1997, expressing the Government's desire to see the return to Cambodia of politicians who had fled abroad in the tensions surrounding the fighting of early July 1997. The letter stated that the Government would undertake "to guarantee the physical security and safety of those members of the National Assembly and other political leaders who wish to return to Cambodia and resume their political activities in connection with the forthcoming elections ... to maintain and respect the parliamentary immunity of members of the National Assembly, and to guarantee all other political leaders freedom from arrest and detention in respect of acts done and words spoken prior to their return, and thereafter in respect of acts [done] and words spoken in connection with their electoral activities".

41. The letter further stated that the Government would ensure that all political leaders enjoy freedom from intimidation and threat in respect of any and all political activities relating to the election and, in particular, freedom of movement, assembly and speech as provided for under the Constitution and the electoral law, without discrimination. The Secretary-General welcomed this initiative and accepted the suggestion that

the United Nations, through the office of the Representative of the Secretary-General, should monitor the Government's fulfilment of these guarantees.

42. Accordingly, at the end of November 1997, four United Nations monitors were sent to Cambodia to work with the office of the Representative of the Secretary-General and other United Nations offices in monitoring the return of Cambodian politicians. As a parallel move, the Royal Government of Cambodia established a security committee of senior police officials to ensure the safety of all returnees and to liaise with the monitors in the course of their duties. Cooperation between the United Nations and this committee has to date been exemplary.

43. In its resolution 52/135 on the situation of human rights in Cambodia, the General Assembly expressed support for the role of United Nations offices in monitoring the return of political leaders currently outside the country and their unfettered resumption of political activity. The activities of the monitors have so far centred on the activities of several Technical Advance Teams which have been sent by the Union of Cambodian Democrats to Cambodia to assess the political climate in advance of a decision as to whether or not a permanent return should be made. In addition, they have also monitored the activities of the President of the Khmer Nation Party, Mr. Sam Rainsy, and the President of the Cambodian National Sustaining Party, Mr. Pen Sovann. In late January 1998, four members of Parliament also returned. The monitors have further made several assessment missions to the provinces of Kompong Thom, Kompong Cham, Battambang, Siem Reap, Kampot, Takeo, Kompong Speu, Kompong Chhnang, Prey Veng and Svay Rieng.

44. To date, the Monitoring Operation can conclude that the Government has fulfilled its guarantees with regard to the returning politicians themselves. However, it is important to note that the ability of these politicians to resume their political activities depends upon the possibility of their supporters to function. In this regard, the monitors have noted that the supporters of many returning politicians remain reticent and fearful of the future and that there is minimal activity in the provinces by those parties in opposition to those in the Royal Government.

45. In the past months, the Special Representative was informed of incidents in several provinces of intimidation and pressure from CPP officials, aimed primarily at members of FUNCINPEC, but also at members of other parties. In Kampong Cham, thumbprint and signature campaigns have been reported, with village and commune chiefs required to collect signatures from villagers committing themselves to the CPP. Methods employed have included promises of reward as well as intimidation and threats. One group of four families in that province reported that ever since they refused to sign, claiming to be affiliated with no party, their houses have been under constant surveillance.

46. Numerous reports have been received of pressure being applied to individuals in positions of authority aligned with FUNCINPEC. The Special Representative has received accounts of marginalization at work, where police officers and local government officials have been pushed out of the normal decision-making process. In other reported cases there has been repeated pressure to switch political allegiances, applied by superiors in a work

hierarchy, thus bringing with it the threat of demotion or dismissal. There have also been reports of physical intimidation of known FUNCINPEC members, some of whom were beaten up, arrested, or had their properties surrounded and looted on the grounds that they might be hiding weapons. Such reports have come mostly from Kampong Cham and Siem Reap provinces.

47. The Special Representative notes with concern that political party signboards other than those belonging to the CPP and parties allied to it have been largely removed throughout the country. In some cases, FUNCINPEC signs bearing the logo, bearing Prince Ranariddh's portrait, have been replaced by logos of Toan Chhay's faction of the party bearing an image of the Independence Monument; KNP signboards of Sam Rainsy's faction and BLDP signs of the Son Sann faction have disappeared. Varying degrees of intimidation have been reported, including signboards being burnt and shot at. In other instances, FUNCINPEC and KNP members have simply been instructed by CPP officials to take down their signboards. In other cases they have removed the signboards themselves to avoid intimidation. The scale of attacks on signboards and pressure to alter political affiliations has varied from province to province. Reports indicate that in Kampong Thom and Kampong Chhnang, signboards and flags bearing Prince Ranariddh's portrait have been publicly displayed since late November 1997.

48. Even in the provinces where FUNCINPEC offices remain open, little or no political activity in the form of canvassing, campaigning or recruiting is actually taking place. It is reported that FUNCINPEC-appointed candidates are not involved in any political activity, fearing for their security. Police in several provinces have reportedly announced that the KNP is an illegal party, and that those associating themselves with it will be endangering themselves. The Special Representative was also informed that in Kandal, KNP membership cards were confiscated from several party members in house-to-house visits by the police. Due to security threats, the KNP has delayed the opening of its offices in the provinces, while waiting for written notification from the Ministry of Interior stating that it is a registered party.

49. There have been at least two instances, in Svay Rieng and in Kampong Cham, of FUNCINPEC members being pressed or intimidated into joining Toan Chhay's FUNCINPEC faction. In January 1998, the KNP also reported ongoing opposition from the Kong Mony faction, as the latter forcibly took down signboards in Kompong Speu and Battambang.

50. Student leaders affiliated or supposedly affiliated with the FUNCINPEC or the KNP have fled or are still in hiding, after reportedly having been harassed and intimidated. Since the death of the President of the FUNCINPEC Youth Association, Chhuong Meas Panharith, who was shot dead in October 1997 after having received threats, the organization has halted its activities. Some other youth organizations affiliated with FUNCINPEC and the KNP are keeping a low profile, also for security reasons. The Special Representative was informed that the FUNCINPEC-affiliated student organizations in the universities had been subjected to pressure and intimidation, and thus were no longer able to operate.

51. Equal access to the media is essential for free, fair and credible elections. Since early July 1997, FUNCINPEC has had no equal access to a

radio or television station; the KNP and the BLDP (Son Sann faction) have also not had access. The Special Representative raised these problems with the Secretary of State at the Ministry of Information, H.E. Mr. Khieu Khanarith, in January 1998. The response was that all registered parties would have equal access to the State radio and television stations and that FUNCINPEC would, through its affiliated company, be able to reopen its previous radio and television broadcasting. The radio equipment confiscated in July 1997 would be returned. While welcoming these promises, the Special Representative concluded in late January 1998 that the overall media situation had to be improved in order to encourage an open debate and free dissemination of opinions.

52. With regard to freedom of the media in general, the Special Representative recognizes a recent trend to restrict the free flow of information in Cambodia. Threats against editors, suspension of opposition newspapers and requests for apologies put concrete limits on freedom of the media. The fact that some newspapers are of low quality is no excuse. If this trend continues, the degree of freedom of the media required for free, fair and credible election will not be sufficient.

53. In October 1997, a programme called "Programmes and Solutions" on State-run television was cancelled. This programme, which had been on the air since 1995, dealt with current issues in Cambodia. Earlier in the same month, Dr. Lao Mong Hay, the host of this programme and President of the non-governmental Khmer Institute for Democracy, attended a symposium in Bangkok and spoke of problems in Cambodia, including the executions in July-August 1997. After returning, Dr. Lao Mong Hay learned that the Ministry of Information had discontinued his programme.

54. There are now more than 40 newspapers in Cambodia, of which approximately 11 are opposition newspapers compared with approximately 19 before July 1997. The circulation of the opposition papers is low and limited to Phnom Penh and a few provincial towns. Since July 1997, several editors of opposition newspapers who remained in Cambodia or returned have been threatened. The Special Representative is also aware of an incident involving a pro-CPP paper. Two grenades were thrown at the office of Koh Santepheap (Island of Peace) newspaper on 15 October 1997. No one was injured and a clear motive has not been established.

55. On 13 October 1997, Antarakum (Intervention News) newspaper was suspended for 25 days by the Ministry of Information. The suspension was due to photomontages of Prince Ranariddh and General Nhek Bun Chay and to stories critical of Hun Sen. The suspension was lifted after seven days when the Ministry of Information demanded an apology, which Antarakum provided. Another suspension occurred of an opposition newspaper called Neak Proyuth (The Combatant) on 7 November 1997. The reasons given were an article which accused Hun Sen of being pushed by Viet Nam to cause a big war and that individuals running the paper had not identified themselves clearly. Neak Proyuth was asked to write a letter of apology to the Ministry of Information, which it did. It was allowed to begin printing again after it submitted a biography of the individuals running the paper to the Ministry of Information. On 8 January 1998, six opposition newspapers were suspended by the Government because of the content of certain articles which spoke

critically and negatively of Hun Sen and the Government. The suspension was lifted a week later by Hun Sen when meeting with European Union officials.

56. In December 1997, the Ministry of Information issued a new instruction requiring the media to cite two government sources when reporting on issues relating to national security and political stability. A subdecree has been drafted under the press law on the same issue. The substance of the subdecree will be of critical importance. The concepts of national security and political stability defined in it could be abused in order to restrict freedom of the media, thereby contravening the Constitution and international standards. During the debate on the press law in 1995 the National Assembly declined to grant the Ministry of Information the authority to issue a ministerial proclamation on press identification. In spite of this, a proclamation has been drafted adding educational, health, financial and administrative requirements which go beyond the provisions of the press law. Khieu Khanarith, however, promised the Special Representative in January 1998 that there would be further consultations on these regulations with media and human rights representatives before decisions were taken.

57. In conclusion, the Special Representative urges the National Assembly to adopt legislation for the establishment of the Constitutional Council. The composition of the Constitutional Council should be decided upon without delay so that it can start functioning soon. It has to review the law on political parties and the election law and prepare its role in connection with complaints in the registration process of political parties and in the electoral process. The independence of the National Electoral Committee should be protected and electoral committees on lower levels appointed in an impartial spirit. Political parties should be given free and equal access to the media. Swift and fair decisions should be taken on the disputes between factions on party names and logos. All politicians in exile should be free to come back in safety and take full part in the election campaign; this includes H.R.H. Prince Ranariddh. Decisive steps should be taken to address the phenomenon of impunity in political crimes; investigations and prosecutions should be seriously pursued in the case of last year's 30 March grenade attack and July-August executions. Effective measures should be taken to put an end to local intimidation against party activists. All these aspects require further monitoring.

B. Protection against political violence

58. The lack of investigation into politically-motivated acts of violence is one important aspect of the problem of impunity in Cambodia. Much political violence marred the developments before the elections and the formation of the new Government in 1993. During that period 667 persons were reportedly killed or abducted and disappeared. Scores of others were injured, threatened and intimidated. Political violence began to reappear in 1994 when in March a newspaper was targeted in a grenade attack. In July 1994, there were allegations about a coup attempt and in September 1994 journalist Noun Chan was murdered. This political murder was never investigated and its perpetrators are still free. It was followed by the murder of a second journalist, Sao Chandara, in December 1994. The reported perpetrator was this time arrested but released after a clearly unsatisfactory trial. Several warrants of arrest have since been issued for this person, but he is still

free and has, in fact, been promoted. In addition, two more journalists have been murdered, three others escaped attempts on their life, two opposition newspapers have been ransacked and their staff beaten, three others were attacked with grenades, a government TV station was attacked with B-40 rockets and machine-gun fire, two political rallies were attacked with grenades. These acts have not been seriously investigated, no one has been brought to justice.

59. During his sixth and seventh missions, the Special Representative continued to assess the extent to which the pledges to investigate instances of political violence were being implemented. He met the Director of the National Police on 4 December 1997 in order to discuss the investigation into the 30 March 1997 grenade attack in which at least 16 persons were killed and more than 100 were injured. No one has been arrested or prosecuted for this crime. The investigation has made no progress since June 1997 but is not closed.

60. Gen. Hok Lundi told the Special Representative that a dozen witnesses had been heard by the government Commission of Inquiry and that two of them had provided sufficient detail to permit composite images of three suspects to be drawn with the assistance of expertise from the FBI. The publication of these sketches led to the identification of one suspect. However, according to Gen. Hok Lundi, the suspect sought protection from Gen. Nhek Bun Chay who had refused to hand him over to the Government. Another difficulty in the investigation was that the KNP leader Sam Rainsy, who was present and obviously targeted during the grenade attack, had not wanted to testify before the government Commission.

61. As an American citizen had been injured, the FBI sent a team to investigate that particular aspect and later were invited to assist the government investigation. The team members, however, left after they were told that their security could not be guaranteed. Gen. Hok Lundi told the Special Representative in December 1997 that cooperation with the FBI should be sought again. At the time of writing this report, the Special Representative is not aware of such an invitation being issued.

62. On 21 August 1997 the Special Representative submitted a memorandum to the Royal Government presenting evidence of summary executions, torture and missing persons since July. The documentation included information on at least 41 cases of execution after arrest. In a meeting on 3 September 1997 with the Special Representative, the Second Prime Minister requested him to convey to the Secretary-General of the United Nations his assurance that all instances of summary executions described in the memorandum would be thoroughly investigated and that no perpetrator "would be spared". The Special Representative welcomed the statement in his report to the General Assembly (see A/52/489).

63. During the sixth visit of the Special Representative, it became apparent that no serious steps had been taken to start investigating the executions reported in the memorandum, not even in the case of former Secretary of State Gen. Ho Sok. In fact, the Special Representative was informed that an investigation initiated by the co-Ministers of Interior into that particular case had been stopped. The Minister of Justice informed the Cambodia office

that he had received no instruction from the Council of Ministers to convene an interministerial committee to investigate the executions. On 10 December 1997, the Special Representative wrote to the Second Prime Minister about the lack of investigation into the executions and encouraged him to intervene so that the process could effectively start. By the end of December 1997, there was no indication from the Royal Government about such steps.

64. When the Special Representative paid his seventh visit, it became clear that the Government's efforts had focused on attempts to discover mistakes in the memorandum in order, as it appeared, to discredit its findings rather than to initiate an effective investigation into the executions themselves. On 23 January 1998, the Second Prime Minister presented to the High Commissioner for Human Rights and, following the meeting with her, to the media, four persons whom he identified as being listed as killed in the memorandum. These men were introduced as Ang Borith, Chin Vannak, So Lay Sak and Chao Keang. The claim that four individuals named as killed by the Special Representative in fact were alive was reiterated in a letter addressed to the Secretary-General of the United Nations on 27 January 1998.

65. In a subsequent statement, the Special Representative clarified the status of the four men. Ang Borith was not mentioned anywhere in the memorandum. The names of Major So Lay Sak and Major Chin Vannak appear in the memorandum in a chapter concerning "missing persons". The memorandum defines the term "missing" and does not equate it to "killed". The fact that these two men reappeared, together with Ung Sim, who was also listed as missing, was welcomed by the Special Representative. Regarding the fourth name, Chao Keang, there was a mistake: he had been mistaken in the memorandum for Chao Kong, his younger brother who, together with another brother, Chao Tea, had been executed on 6/7 July 1997.

66. In his statement, the Special Representative regretted that Chao Keang was presented to the High Commissioner for Human Rights and the media as proof that the memorandum was false, while two of his brothers had been killed and no one had been brought to justice for their murders. The Special Representative concluded that the figure of at least 41 summary executions, as mentioned in the memorandum, was still valid and he regretted that no serious effort had been made to investigate these killings and prepare prosecutions. The High Commissioner and the Special Representative offered to attempt to locate international experts who could come and observe and advise, if requested, any investigation and the preparation of prosecutions in regard to the executions.

67. Since the Special Representative submitted the memorandum on 21 August 1997, he has received information relating to the killings of 21 other officers, officials or activists affiliated with FUNCINPEC. These allegations are now being checked for accuracy and clarification of circumstances. The Special Representative is also seeking further information about the killing of On Phuong, an activist of the Khmer Nation Party, and his five-year-old daughter in the province of Prey Veng on 27 January 1998.

C. Problem of impunity

68. In his previous reports the Special Representative has documented the nature and extent of the problem of impunity in Cambodia. He has underlined that this has been a long-standing problem and a major obstacle in the efforts to construct a functioning system of the rule of law. He has noted that impunity undermines faith in the administration of justice and the moral authority of the courts. The problem is both institutional and political, and therefore requires not only reforms in the administration of justice, but also the political will to ensure that no one is above the law, that the judiciary is given effective authority to prosecute all offenders, regardless of their status or rank, and that it is allowed to discharge its duties in an independent manner.

69. The Special Representative regrets that insufficient action has been taken to address this major problem. The Second Prime Minister took action in August 1997 against illegal checkpoints along the roads. There have also been efforts to seize illegal weapons, as pointed out in the Government's letter of 18 November 1997 to the Special Representative. However, soldiers, the police and the military police continue to intimidate civilians; such reports have reached the Special Representative from several provinces.

70. The Special Representative commends the efforts made by the Minister of Justice to eradicate institutionalized impunity as guaranteed by article 51 of the 1994 Law on Civil Servants. In January 1997 the Minister of Justice submitted a draft law amending article 51 to the co-Prime Ministers, suggesting that the need to seek authorization to prosecute from the Council of Ministers or the head of the concerned institution prior to the prosecution or arrest of a civil servant, except in cases of flagrante delicto, would be replaced by a mechanism in which the prosecutor wishing to charge a civil servant and bring him to trial would merely inform the person's superior. In his comment of 11 November 1997 on the General Assembly report, the Minister urged the Council of Ministers again to consider this amendment. However, article 51 has not been amended or repealed. The Minister of Justice, in another development, informed the Minister of Defence on 22 June 1997 in writing that article 51 was not applicable to military personnel. Though the letter made reference to a particular case involving a member of the military police arrested in April 1997, the letter appears to clarify the scope of article 51 in general.

71. The most serious human rights violations in Cambodia in recent history have been committed by members of the Khmer Rouge. When the country was known as Democratic Kampuchea, the official name of the Khmer Rouge State from 1975 to 1979, an estimated 1.7 million people were killed, or died from disease, forced labour and hunger. The Khmer Rouge was responsible for widespread atrocities, including massacres, executions of civilians and foreign nationals, and torture which continued even after 1979.

72. No Khmer Rouge leader has been arrested or prosecuted by the Cambodian authorities. None of them has ever admitted guilt or even apologized to the Cambodian people for his or her actions. The Special Representative is concerned at the prospect of current and former Khmer Rouge leaders being allowed to participate in the political process without their personal

responsibility for the 1975-1979 killings being clarified. Without accountability of the Khmer Rouge leaders, the cycle of impunity in Cambodia will continue. Making the Khmer Rouge leaders against whom there is evidence of widespread abuses answerable before the courts may restore some public confidence in official justice. The show trial against Pol Pot in Anlong Veng in June 1997 reinforces the need for a genuine legal process in full conformity with international standards for fair trial procedures.

73. In resolution 1997/49 the Commission on Human Rights requested the Secretary-General through his Special Representative for human rights in Cambodia, in collaboration with the Office of the High Commissioner for Human Rights, to examine any request by Cambodia for assistance in responding to past serious violations of Cambodian and international law as a means of bringing about national reconciliation, strengthening democracy and addressing the issue of individual accountability. In a letter to the Secretary-General dated 21 June 1997 the Cambodian co-Prime Ministers requested the assistance of the United Nations and the international community in bringing to justice those persons responsible for the genocide and/or crimes against humanity during the rule of the Khmer Rouge from 1975 to 1979.

74. In their letter, the co-Prime Ministers stated that Cambodia did not have the resources or expertise to conduct a procedure of that scope. Thus, they believed it was necessary to ask for the assistance of the United Nations. They stated that they were aware of similar efforts to respond to the genocide and crimes against humanity in Rwanda and the former Yugoslavia, and requested that similar assistance be given to Cambodia. The co-Prime Ministers stated in their letter that they believed that crimes of this magnitude were of concern to all persons in the world, as they greatly diminished respect for the most basic human right, the right to life. They expressed the hope that the international community could assist the Cambodian people in establishing the truth about the period 1975-1979 and in bringing to justice those responsible. Only in that way could the tragedy be brought to a full and final conclusion.

75. In the General Assembly report the Special Representative strongly urged the United Nations and its Member States to respond positively and generously to the above-mentioned request. To address the problem of impunity, it is important that the most serious violators of human rights in Cambodia are brought to justice under international law. As an immediate first step, the Special Representative recommended to the General Assembly that the Secretary-General be authorized to appoint experts to evaluate the existing evidence of responsibility for the Khmer Rouge human rights violations. The Special Representative raised this issue again in September 1997 with each of the two signatories of the 21 June 1997 letter, as well as with the King. All three declared their support for the proposal.

76. The lack of prosecution by the Government of past instances of serious human rights violations creates a climate of impunity and sends a negative signal to everyone in the society. To the criminal elements, it is an encouragement that they might continue to kill, torture, rape, illegally arrest and detain without being held accountable; that they are above the law.

To the public, the message might be understood to be that the law is powerless to protect ordinary people from abuse and that, therefore, it is necessary to defend one's interests through violent means.

D. Rule of law, independence of the judiciary and administration of justice

77. The Special Representative welcomes the progress made to establish institutions called for by the Constitution and essential for the strengthening of the rule of law in Cambodia. The Supreme Council of Magistracy convened for the first time on 3 December 1997 and appointed during that meeting 42 new magistrates. Among its other tasks is to decide on disciplinary action against magistrates and appoint three members of the Constitutional Council. Its independence has been questioned by some of the political parties, as several of its members are formally affiliated with CPP. It is crucial for the credibility of the whole justice system that the Supreme Council demonstrates its genuine impartiality and that all political parties respect its integrity.

78. The Constitutional Council is the body designated by the Constitution to determine the constitutionality of legislation and to decide on election-related disputes. A draft law for this body is presently with the National Assembly. The Constitutional Council is urgently needed to review the constitutionality of legislation like the recently adopted laws on election and political parties. It will also be important for the review of appeals against decisions regarding registration of parties.

79. The need to protect the judiciary against direct or indirect political pressure has been raised by the Special Representative in previous reports. A suggestion that members of the judiciary would be prohibited from membership in parties was not included in the law on political parties. The problem remains and some magistrates have told the Special Representative that they would be prepared to renounce their party affiliation if requested to do so by law or the Supreme Council of Magistracy. The Special Representative recommends further discussions on this issue in order to sever the links between judges and political parties.

80. The Ministry of Justice has established international cooperation for the training and developing of the capacities of the court personnel. Through the Judicial Mentor Programme of the Cambodia office, prosecutors, clerks, police, prison authorities, military police and local officials receive training and advice about human rights, domestic law and the role of the judiciary. The Special Representative encourages continued donor support for these valuable long-term programmes of institution-building, as well as for the physical reconstruction of Cambodia's dilapidated court buildings.

81. In his comments of 11 November 1997 on the General Assembly report the Minister of Justice referred to the low salaries of the court staff. This is a major concern since it also tends to lead to some level of corruption. The public perception is that corruption is widespread within the courts. Higher salaries would partially address that concern. Therefore the Special Representative urges the Royal Government to increase the budget allocation for all court staff and court operations. If the judiciary is to assume its

constitutional role, the magistrates ought to be paid at a level similar to the salaries of the National Assembly members and Royal Government ministers.

82. Interference by local authorities in judicial matters is a matter of concern to the Special Representative. The First Deputy Governor of one province summoned court staff in early January 1998 and organized them as a branch of the CPP. The court was also instructed to delay the hearing and resolution of any cases filed by persons in opposition to the Government or which involve complaints against the Government, until the elections are over.

83. The Special Representative commends the prompt action by the Minister of Justice to ensure the punishment of perpetrators in the case of the ill-treatment by the gendarmerie of judge Son Neatheavy in Pursat Court in late October 1997. The judge was verbally abused, beaten and pushed to the ground and then had bullets shot around his body, one of which hit his shoe. A special prosecutor sent by the Ministry of Justice and an investigating judge have been working on the case, in spite of obstruction by the local gendarmerie.

84. The Special Representative has been informed about frequent instances of lack of respect for basic procedures of arrest and detention. The majority of the cases handled by Legal Aid of Cambodia and the Cambodian Defenders Project concern cases of illegal detention. Cambodian law does not allow arrests without a warrant except for clearly defined situations, but this requirement is very often violated. It happens that the prosecutor, upon the request of the police and in order to comply with the legal requirements, delivers an arrest warrant after the arrest has taken place, in some cases days after the suspect has been taken into police custody. The Special Representative urges the Government to instruct all law enforcement officials to strictly abide by the legal requirements of the procedures for arrest.

85. According to the law, no one may be detained for more than 48 hours without being brought before a judge following charges filed by a prosecutor. The Special Representative has been informed that this period is often exceeded, especially in the case of women detainees. The Special Representative has noted in his previous reports that most cases of torture occur in police custody and urges the Government to instruct the police not to exceed the limits of detention in police custody foreseen by law.

86. Cambodian law limits the pre-trial detention period to four months which may be extended to six months if justified by the requirements of the investigation. The Special Representative acknowledges that considerable improvements have been made in this area, but is still concerned about the many cases of excessive periods of pre-trial detention brought to his attention. In fact, in a majority of cases the pre-trial detention is longer than four months. As often no investigation is undertaken during that period, the detention is prolonged in many cases for two or more months. Pre-trial detention for as long as one full year is not uncommon.

87. Another problem relates to the pre-trial detention of minors between 13 and 18 years of age. The length of their detention should not be longer than one month and another month if the minor is charged with a crime. The Special Representative was, however, informed that excessive pre-trial

detention periods for minors are very common. Cases of minors less than 13 years of age, who should not be placed in pre-trial detention, were also brought to the attention of the Special Representative. In Kompong Cham two young children, aged 9 and 10, were arrested in September 1997 on a charge of theft, and spent some 10 days in prison.

88. The Special Representative is also concerned about the number of persons imprisoned for debt for lengthy periods of time. One example was a woman who was sentenced to eight months' imprisonment for fraud in June 1997 by the Siem Reap Provincial Court; she was further sentenced to an additional period of 12 years' imprisonment for accumulated payment of damages to various complainants. Such compensation to victims should instead be recovered through a civil procedure.

89. A couple of recent court cases have attracted particular attention. One relates to the preparation of a case against H.R.H. Prince Norodom Ranariddh. At the time of writing this report, no trial had started. The fact that government leaders since early July 1997 have made public statements about the guilt of Prince Ranariddh does raise very basic questions about whether a fair trial is possible.

90. Another politically charged case relates to the September 1997 trial against three persons accused of the murder of Keo Samouth, a relative of the Second Prime Minister. Srun Vong Vannak, security chief of the Khmer Nation Party, and his two co-defendants were sentenced at the Phnom Penh Municipal Court after a trial which fell short of elementary procedural requirements for fairness. Basic procedures had also been violated during arrest and interrogation. During the trial itself Srun Vong Vannak withdrew a confession he said had been made under coercion and threat. All three co-defendants have lodged an appeal to the Appeals Court. In the meanwhile the parents of Srun Vong Vannak have made a request for amnesty and the Second Prime Minister has suggested that this be granted for all the co-defendants. A final decision will probably not be taken before the case goes to the Appeals Court.

91. There have also been further developments in the case of Chau Sokhon, the FUNCINPEC deputy chief of the Sihanoukville military police, who was sentenced to 15 years' imprisonment in June 1997 and to another 3 years in September on charges of drug trafficking. On appeal the Appeals Court overturned the sentences, but the Prosecutor General, in turn, lodged a complaint to the Supreme Court. In the meanwhile the three judges of the Appeals Court who had handled the case were suspended. The Special Representative is presently studying the facts.

E. Protection against torture

92. During his sixth and seventh missions to Cambodia, the Special Representative again raised the issue of torture. Torture is prohibited under the Cambodian Constitution and Criminal Law. Article 38 of the Constitution provides that the law guarantees that there shall be no physical abuse against any individual and that coercion, physical ill-treatment or any other mistreatment that imposes additional punishment on a detainee or prisoner shall be prohibited. The article further provides that confessions extracted under torture are not admissible as proof of guilt, and holds the perpetrator

of torture punishable under the law. The same prohibition exists in the Cambodian Criminal Law (article 12). Cambodia is also a party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. However, there is evidence that torture during interrogation remains widespread in Cambodia.

93. The Special Representative submitted on 16 June 1997 a document to the Royal Government and to the provincial authorities in Battambang describing 32 cases of alleged torture by police interrogators in that province, most of which occurred in the single police station of Svay Por. The document had been prepared at the invitation of the Director of the National Police, after initial reports on torture in that province had been brought to his attention earlier in the year by the Special Representative. When the document was submitted the Special Representative was promised a reply by the end of August 1997. At a meeting on 4 December 1997, Gen. Hok Lundi stated that no action had taken place yet to investigate the allegations due to the July events. He gave his personal guarantee that the Criminal Investigation Department would be assigned to look into them, and in particular into the allegation that one detainee was beaten to death. He stressed that if the allegation could be substantiated, the responsible police officers would be punished.

94. The Minister of Justice in his 11 November 1997 comment on the General Assembly report stated that his Ministry had paid high attention to this matter and that a workshop had been organized with the participation of relevant officials and NGO representatives. He had asked the prosecutor in Battambang to investigate the case of one detainee who, according to witnesses, had been tortured and was later found dead in a cell. The prosecutor, however, had not been able to establish sufficient evidence to prosecute the offender. In the same comment the Minister referred to another case, in Kampong Cham, of a detainee who died under torture - in this case the torturer had indeed been punished.

95. Since the submission of the torture cases in Battambang, the Cambodia office has received credible information showing that detainees continue to be tortured in Svay Por and other police stations in the province, including the provincial police headquarters. A follow-up report on these and other findings relating to torture will be prepared for submission to the Royal Government. The Special Representative has also received information about illegal interrogation methods in Koh Kong and raised this issue with the Provincial Police Commissioner during a visit to the province in January 1998.

F. Prison conditions

96. One major problem for the prisons throughout Cambodia is the late arrival of funds intended for feeding prisoners. Delays of two to three months in the allocation of funds are common, which forces prison directors to borrow money. When the funds arrive from the Government, the already minimal allocation for food is further diminished by the high interest to be paid on the borrowed money. The result has been malnutrition in several prisons. This is serious; people sentenced to imprisonment should not be punished with enforced starvation. A government which cannot feed its prisoners has no right to keep them locked up.

97. The Special Representative suggested in March 1997 an administrative reform simplifying and expediting the procedure for allocation of food rations to the prisons. At that time, he was informed that a new system of multiple-month allocations would be implemented to solve the problem.

98. In June 1997 the Special Representative addressed prison conditions in a letter to the Government, including the continued problem of delayed payments to the prisons. In a response dated 13 October 1997 the Ministry of Interior acknowledged the delays, and stated that the Ministries of Economy and Finance and the Ministry of Interior were making great efforts to simplify the accounting procedures. The Ministry of Interior considered that some progress had been made and hoped for the timely arrival of the funds in future. The impact of these efforts was, however, not immediate. As of January 1998, the crisis caused by the delayed payments continued in Pursat, Banteay Meanchey, Prey Veng, Kompong Som, Kompong Cham Provincial Prison and T5, Kompong Chhnang, Kampong Thom, Kampot, Kandal, Battambang, and Siem Reap.

99. In another letter addressed to the Special Representative dated 5 December 1997, Deputy Prime Minister and co-Minister of Interior Sar Kheng suggested that reporting on the chronic food shortages and unfortunate effects resulting therefrom be matched with offers of assistance. The co-Minister asked the Special Representative to help identify possible sources of assistance to the prisons. The Cambodia office had contacted the World Food Programme and asked it to provide emergency feeding whenever a food crisis occurred. A Framework Agreement to that effect was signed between WFP, the Cambodia office and the non-governmental organization the Cambodian League for the Promotion and Defence of Human Rights (LICADHO). The Agreement expired at the end of December 1997 and the Special Representative has since received alarming reports of acute food shortages. The Cambodia office will seek to obtain a renewal of the Agreement with WFP, temporarily and on humanitarian grounds. At the same time the Special Representative urges the Government to seek ways of taking full responsibility for feeding its own prisoners. Such basic expenditures should not depend on outside generosity, which is a reason why United Nations agencies as a matter of policy seek to avoid such involvement.

100. The food problem has led to medical problems among prisoners. The Special Representative notes, however, that an effort has been made to improve medical care in prisons. The Ministry of Health has instructed the provincial hospitals to conduct prison visits, and the Minister of Justice has instructed the prosecutors to take action if medical care is not given to needy prisoners. Provincial hospitals in several provinces are now actively involved in providing medical assistance to prisoners. The Special Representative also welcomes the advice given to prosecutors by the Ministry of Justice to grant conditional release to six HIV-positive prisoners.

101. The Special Representative received reports that a group of prisoners in Kampong Cham prison, who had attempted an escape, were shackled for several days and nights in October 1997. Three cases of shackling in Sihanoukville prison were also reported to the Special Representative. One case concerned a 12-year-old minor who, according to the report, was handcuffed 24 hours a day from 16 to 25 October 1997 on the grounds that he was a troublemaker and had stolen a cigarette. Thereafter he had been handcuffed 17 hours a day for another 11 days. There have also been two cases in Sihanoukville prison

concerning two detainees who were ankle-shackled for more than a month during October/November 1997 on the grounds that they were dangerous and that security conditions were insufficient. The Special Representative is concerned about these reports indicating that such methods, previously abandoned, may be reintroduced in prisons.

102. The Special Representative notes that there is still no law regulating the operations of Cambodia's prisons. The Cambodia office has worked with the Ministry of Interior on draft regulations for more than three years, and the Australian Criminal Justice Assistance Project was involved as of May 1997 in drafting new regulations, which were finalized in late November 1997. These regulations are being reviewed by the Government. The Special Representative emphasizes the importance and urgency of adopting such regulations, which would set basic standards for food, health care, discipline and prison administration, and on the basis of which prison procedures can be worked out.

103. The Special Representative regrets that the Cambodia office has not yet been granted access to all detention places in Cambodia, with a view to communicating freely and confidentially with all prisoners and detainees. This is in spite of a promise to the Special Representative by the Second Prime Minister that such unhindered access would be granted. In fact, access to detainees held at the PJ and T3 prisons in Phnom Penh has proved particularly difficult, and has been denied in several cases. While authorization from the Ministry of Interior to communicate freely and confidentially with individual detainees has been forthcoming, the Ministry of Justice is still instructing prison directors to deny access to human rights organizations unless they obtain a specific authorization from the prosecutor handling the case.

104. The visiting of prisons and places of detention is an important dimension of the work of the Cambodia office. It is essential that they be able to interview prisoners and detainees in privacy. The Special Representative recommends that relevant officials be instructed to facilitate the visits of United Nations staff of the Cambodia office as well as of representatives of the non-governmental human rights organizations, such as LICADHO and legal aid groups.

G. Labour rights

105. Low labour costs and preferential treatment of exports to the United States of America and the European Union make Cambodia attractive for foreign investment. The main private investments in Cambodia are in garment factories, wood processing, agro- and food industries, construction work, hotels and tourism. During the military clashes of early July 1997, a number of factories in Phnom Penh were damaged and looted and nearly all activities disrupted. However, most factories started again soon, after the Government actively negotiated the swift return of investors. Assurances were given that workers would not create trouble that could jeopardize investments. The number of factories, particularly garment factories, is now larger than before.

106. Since January 1997, employers had agreed with unions in several collective bargaining agreements to improve labour conditions, including the establishment of a minimum wage of US$ 40 per month. After July 1997,

however, the situation worsened again in most factories, often returning to pre-agreement conditions. Workers were suspended and wages were not paid. In several factories armed soldiers were observed guarding the workers, workers were dismissed, and some had to pay bribes in order to get their old jobs back. Labour unions were intimidated, and their leaders dismissed or threatened with dismissal if they continued their union activities. Several union leaders went into hiding and a few of them went abroad, fearing for their security. It was not until November 1997 that the labour movement slowly started up again. The Special Representative has recommended that the Government recognize all eligible labour unions that fulfil the legal requirements. However, several qualifying trade unions have still not been registered, such as the Free Trade Union of Workers of the Kingdom of Cambodia, the Workers Union for Economic Development, the Free Democratic Workers Union, the Independent Free Worker Union, the Union of Social Economic Development and the Ladies Garment Workers Union.

107. In general, working conditions are still poor. Salaries are low and working hours remain exceedingly long, often forcing workers to work to exhaustion, with little or no extra pay for overtime hours or work on official rest days or holidays. Few of the factories allow workers to take annual leave, though a minimum of 18 days' vacation is prescribed by the Labour Code. Sick leave and holidays, when taken, are most often deducted from the salary. Social security is still totally lacking in Cambodia. When there is no work available, workers are not paid. Night work is still commonly imposed and no security measures are taken to protect workers, particularly young women, on their often long and risky way home. Beatings, verbal abuse and other degrading treatment are often reported. Internal disciplinary rules, unilaterally drawn up by employers, undermine the protective provisions in the Labour Code.

108. According to surveys of the Cambodian Labour Organization of October and December 1997, workers pay a fee in order to secure a job, equivalent to several months' salary. Most workers have no copy of the contract they have signed. Unlimited periods of probation are sometimes imposed. The same surveys showed that 42 per cent of those dismissed never received any explanation of why they lost their jobs. Men, who form a minority in the industrial work force, are paid more than women for the same work, the assumption being that they produce more.

109. Also according to the surveys, only 12 per cent of workers worked less than 52 hours a week, 58 per cent worked 52 to 84 hours, and 30 per cent worked 84 to 94 hours per week; 62 per cent of all workers worked 7 days per week. The law prescribes a 48-hour work week. Health problems are rampant, and conditions are particularly unsafe in construction, chemical and wood-processing industries. The number of work-related accidents is high. Conditions are also severe in rubber plantations, where in many cases whole families, including young children, work together in order to survive. In one rubber plantation violent demonstrations in October 1997 led to grave damages for the company.

110. The Kandal Provincial Court in an important test case on 2 January 1998 ordered the Supreme garment factory to reinstate and pay damages to a former female worker, who had been dismissed in June 1997 for participating in

trade union activities. Other complaints have never resulted in court rulings, as the cost of legal proceedings is prohibitive for most workers.

111. Employers violating the Labour Code have claimed not to have been informed of its provisions. The Special Representative recommends that the Labour Ministry make renewed efforts to disseminate copies of the Labour Code, as well as clear and accurate information about labour rights and collective bargaining, to employers and employees.

H. Women's rights

112. Cambodian women play an important role in the social, cultural and economic life of the country, particularly in the rural areas. As a result of decades of war and social disturbance, it is estimated that over a quarter of Cambodian families are headed by women, who bear the sole responsibility for supporting their families.

113. The Constitution of Cambodia protects women against all forms of discrimination and prohibits the exploitation of women in employment and exploitation of women by prostitution (arts. 45, 46). The Constitution states that Cambodia "shall recognize and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human Rights, the covenants and conventions related to human rights, women's and children's rights" (art. 31). Cambodia is a party to the Convention on the Elimination of All Forms of Discrimination against Women and has the obligation to eliminate discrimination against women in order to ensure they enjoy all economic, social, cultural, civil and political rights equally with men.

114. Despite the existence of legal protection as provided for by the Constitution and the international human rights treaties to which Cambodia is a party, women in Cambodia often live with discrimination and violence which negatively affect their educational, social, economic and political life. Women are not encouraged to participate in the political and public life of the country, which is dominated by men. Educational opportunities diminish for many girls as they grow up. Women are victims of widespread domestic violence. Women workers often face insults and humiliations, for instance, by being body-searched in the factories where they work. Large numbers of women are sold or trafficked for prostitution. The lack of access to public health facilities takes a particularly heavy toll on the reproductive health of women.

115. Cambodian women are not given an active and direct role in decision-making affecting the political and public life of the country. The Council of Ministers does not include a woman. The Ministry of Women's Affairs is headed by a man. Only 7 of the 120 members of Parliament are women. Of the 22 provinces in Cambodia, there is 1 woman deputy governor and no woman governor. Of a total of 175 district chiefs, 2 are women. Of a total of 1,558 commune chiefs, 10 are women. In the area of the administration of justice, there is also a striking disparity between the number of women and men officials.

116. The Special Representative reminds the Government of its responsibility, as a party to the Convention on the Elimination of All Forms of Discrimination against Women, to take all appropriate measures to eliminate discrimination

against women in the political and public life of the country. In particular, the Government shall ensure that women have the right to participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government (art. 7).

117. The key to the empowerment of women is education. In fact, available statistics indicate that girls have a lower repetition rate at schools and that their education, particularly at post-primary levels, has higher returns. However, when resources are scarce, opportunities for continuing education are often reserved for boys, while girls are kept at home to care for siblings or work. This explains why girls have higher drop-out and lower enrolment rates, especially in secondary and tertiary education. The disparity between men and women in adult literacy is important, with only 50.9 per cent of females being literate, compared with 85.1 per cent of males, according to recent national surveys. Education is essential for the realization of women's rights and the Special Representative recommends that the Government take the necessary steps to protect and reinforce the right to quality education at all levels and to ensure equality in education for all citizens, as stipulated in the Constitution. The Special Representative also recommends that opportunities for professional and personal advancement through, for instance, training programmes include women.

118. The Constitution states that "the law guarantees there shall be no physical abuse against any individual. The law shall protect the life, honour and dignity of the citizens" (art. 38). Despite this legal provision, much remains to be done to combat violence against women in all its forms, from widespread domestic violence to growing prostitution and abduction, trafficking in women and children, and rape.

119. The Special Representative notes the important joint effort of the Ministry of Women's Affairs and the NGO Project Against Domestic Violence to conduct a first-ever statistical study in Cambodia on the prevalence of domestic violence in 1996. According to the study, one in every six women is physically abused by their spouse and half of the cases of abuse cause injuries. The Special Representative is encouraged to note that a draft law on domestic violence has been prepared with the involvement of the Ministry of Women's Affairs, the Cambodia office and NGOs, and recommends that it be submitted to the National Assembly for adoption without delay. He also recommends educational efforts with a view to changing the common perception that domestic violence is solely a family matter and should only be dealt with within the family. Particular emphasis should be put on the issue of domestic violence in the human rights training for the police. Several non-governmental groups, such as the Cambodia Women's Crisis Centre visited by the High Commissioner for Human Rights and the Special Representative in January 1998, play an important role in providing services to women victims of domestic violence and in educating the public. The Special Representative calls for continued support to these groups.

120. Rape remains a widely unpunished crime; few rape cases are brought to court at all, and when they are, convictions are rare. Out-of-court negotiations and settlements are common; very often a financial arrangement is reached, or the rapist may agree to marry his victim. There have also been

reports of marital rape. The Special Representative recommends that special attention be given to this form of violence against women within the framework of the law.

121. Prostitution has been on the rise in recent years. It is estimated that there are 15,000 prostitutes in Phnom Penh alone. Many of the prostitutes are trafficked to brothels through networks which reach the villages, exploiting the situation of poverty. An alarmingly large proportion of prostitutes have been infected by HIV/AIDS. The Convention on the Elimination of All Forms of Discrimination against Women requests States parties to take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women. The Special Representative notes that Cambodia has adopted a law on the suppression of kidnapping, trafficking, sale and exploitation of human beings and recommends more effective implementation of the law.

122. The Special Representative reminds the Government that it is required by the Declaration on the Elimination of Violence against Women to exercise "due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private actors".

123. Access to health services is a problem in Cambodia, with one fifth of the population having an operational health facility in the village of residence and another fifth having to travel more than five kilometres to reach the nearest health facility. Cambodia has one of the highest fertility and infant mortality rates in the region. Cambodia also has a high maternal mortality rate and a low rate of contraception use. Without access to and means for health facilities, women, particularly in rural areas, often turn to unsafe methods for birth deliveries and for abortions with risks of health complications.

124. The Special Representative notes the constitutional responsibility of the Government for the care of children and mothers and to establish nurseries and help support women and children who have inadequate support (art. 73). The Government also has the obligation under the Convention on the Elimination of All Forms of Discrimination against Women, to ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation (art. 12); to ensure access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning (art. 10); and to ensure the protection of health and to safety in working conditions, including the safeguarding of the function of reproduction (art. 11).

I. Rights of the child

125. Approximately 30 per cent of the estimated 15,000 prostitutes in Phnom Penh are minors. The real number may be higher as prostitution occurs in other places than brothels, such as nightclubs, massage parlours and karioke bars. The young victims have been trafficked or lured into prostitution because of poverty. Most of them come from rural areas of Cambodia, others come from Viet Nam. NGO workers have reported that young

Vietnamese prostitutes have been repatriated back to their families in Viet Nam, suggesting that there are active trafficking networks from Viet Nam into Cambodia.

126. In one province bordering Thailand, a staff member of the Cambodia office and the staff of a local human rights group witnessed an offer to sell a young girl of about 14-15 years old, for a period of one week, to a government official for 10,000 bahts (about US$ 200 at the current rate). The girl was being sold by her mother through an intermediary in a popular restaurant. Attempts to protect the girl failed. In the same province, large-scale prostitution of young women, among them children, took place in a newly built hotel owned by a high-ranking government official. Most of the clients were soldiers. The Special Representative has received a great number of similar reports indicating that child prostitution is tolerated by some officials.

127. The Municipality of Phnom Penh organized a crackdown on brothels in November 1997 in various districts of the city. More than 100 child prostitutes were taken away from the brothels and placed in shelters run by NGOs. Some brothel owners were detained, at least temporarily. Further raids followed. As of January 1998, according to NGO sources and the Municipality, 317 prostitutes had been freed in Phnom Penh, 107 of whom were under 18 years old. Some 30 brothel owners were arrested and 3 of them have been sentenced. There was a similar crackdown in Battambang province in mid-January which resulted in the release of 67 prostitutes who were referred to local NGOs. By the end of January, only a few women remained with the NGOs.

128. The Special Representative welcomes the commitment of the Cambodian authorities to tackle the problem of prostitution and sex trafficking, as well as the cooperation between NGOs and the authorities. However, a negative trend is that prostitution is now going underground, making it more difficult to investigate abuses and reach out with programmes for the prevention of sexually transmitted diseases, including HIV/AIDS. The Special Representative remains alarmed by the high rate of HIV/AIDS among prostitutes. It is estimated that almost half of them are HIV positive. This concern was shared by the Deputy Mayor of Phnom Penh, during his meeting with the Special Representative in January. NGOs reported that the brothels are reopening as massage and karioke bars. They also raised concerns that some released victims were taken back by the brothel owners, therefore possibly aggravating the dependency of the victims on the brothel owners.

129. The Special Representative also conveyed to the Deputy Mayor his concern about reports of police abuses during the raids, and reported threats and harassment of NGO staff working at the shelters. As most of the brothel owners are armed and some have police or military protection, there is a need for action by the authorities to protect NGO staff and girls who have been freed. The Municipality acknowledged these problems and promised to continue to take appropriate action. The issue of police behaviour during the raids raised again the need for a better trained police force to deal with problems relating to trafficking and prostitution of children and women. The Special Representative recommends that further assistance be provided to NGOs. Important programmes are run by the Cambodian Women's Crisis Centre (CWCC), the Cambodian Centre for the Protection of Children's Rights (CCPCR), Action

pour les femmes en situation précaire (AFESIP) and Sok Sabay. An NGO Action Committee on Child Exploitation has been established to coordinate investigation of and provide services to victims of sexual exploitation.

130. Important work is also being done by NGOs for the improvement of children's and women's health, in particular in relation to HIV/AIDS. Appropriate shelters or centres should be created to assist victims of HIV/AIDS and to help prevent discrimination against them. The Special Representative recommends that more coordinated action and cooperation be put in place among United Nations agencies and international organizations. For this purpose, the Special Representative has requested that international organizations, including UNICEF, UNDP, WHO, ILO, the International Organization for Migration (IOM) and the Cambodia office, coordinate their efforts to help the Cambodian authorities and NGOs to combat sex trafficking, prevent the spread of HIV/AIDS and assist victims.

131. The Special Representative also recommends better implementation of the law on the suppression of the kidnapping, trafficking, sale and exploitation of human beings, and that major traffickers and brothel owners be arrested, prosecuted and punished. Public officials found to have taken bribes for the release of the suspected traffickers or pimps should be punished.

132. Child labour remains a problem. It is estimated that there are more than half a million child workers in Cambodia. Children are exploited as construction and factory workers, domestic servants, fish processors or street vendors. The Special Representative recommends again that Government authorities, NGOs and United Nations agencies put in place a coordinated programme so as to identify priorities and measures to end the most intolerable forms of child labour.

133. Children driven into the streets of the major cities end up begging, stealing, or are trapped into prostitution and subjected to physical abuse and disease. It is estimated by NGOs that there are more than 10,000 street children in Phnom Penh alone, the majority of whom come from the provinces. The Special Representative encourages more preventive efforts at the provincial level but also stresses the need for awareness programmes in order to reduce child exploitation, ideally with participation of children themselves. The Global March on Child Labour which passed through Cambodia in early February 1998 was a useful reminder of the urgency of this problem.

134. Another form of child exploitation is the recruitment of children as soldiers. Cambodia is a party to the Convention on the Rights of the Child which obliges States parties to take all feasible measures to ensure that persons who have not attained the age of 15 years do not take a direct part in hostilities. The 1997 law on general statutes for the military personnel of the Royal Cambodian armed forces stipulates that military personnel must be at least 18 to be appointed. However, minors are recruited as soldiers and to carry war material or provide other services for the military. No statistics are available, but the Cambodia office, NGOs and journalists have come across numerous cases. Since the fighting in July 1997 and the subsequent organization of resistance forces in areas bordering Thailand, it appears that the number of child soldiers has increased in both warring factions. Child soldiers have been taken to the front lines, risking their lives like other soldiers and exposing themselves to shooting, shelling, landmines and malaria.

On 21 July 1997, an Australian defence attaché reported in an interview with a local newspaper that he had interviewed 17 young CPP soldiers at Siem Reap military hospital, and said that the number of boy soldiers was alarming. He visited only CPP units, but stated that resistance units also used child soldiers. NGO workers also saw several child soldiers in Siem Reap and Bantey Meanchey provinces during July and August 1997. They were able to interview some of them in Siem Reap and Phnom Penh hospitals in August 1997. Child soldiers are mostly from very poor families or are orphans. They enter the army either voluntarily to get food, accommodation and to earn some money for their family, or may have been drafted by force.

135. The Special Representative expresses grave concern about reports by human rights workers and soldiers in December 1997 of alleged forced conscription of boys as young as 8 or 10 forced to join the army during raids on villages in Oddar Meanchey province by government forces who demanded payment from parents in return for an exemption from the unofficial draft. The Special Representative encourages public authorities and national as well as international organizations to give more attention to the problem of child soldiers and contribute to their demobilization and rehabilitation into normal life.

136. The Special Representative met children during his visits to Cambodian prisons, some as young as 14. Currently, there are no separate detention centres for convicted juveniles. The Youth Rehabilitation Centre outside Phnom Penh detains a mixture of street children, child victims of trafficking and prostitution, and unconvicted delinquent juveniles. The Special Representative was informed that the Ministry of Justice has provided lists of convicted children to the Youth Rehabilitation Centre. However, in view of the poor living conditions in the Centre, as reported by the Legal Aid of Cambodia and a Cambodia office team that visited in September 1997, no minor should be transferred to the Centre before clear improvements are made. The Special Representative has also been informed that children under 13 are held in pre-trial detention, which is in violation of the law. Likewise, it has been reported that the pre-trial detention of minors who are 13 and older in a number of cases has been longer than the legal maximum of two months.

137. The Special Representative recommends a thorough review of the Government's policy towards juvenile justice. Non-custodial alternatives should be developed. For minors who are deprived of their liberty, arrangements should be made to enable relatives to visit. Young prisoners should be separated from adults and be given special attention and a chance at an education. The living conditions in the Youth Rehabilitation Centre need upgrading and rehabilitation programmes should be developed for convicted juveniles.

J. Trafficking in human beings

138. The Special Representative has received reports of large-scale trafficking of human beings in the south-western province of Koh Kong. Organized networks were discovered operating from Dang Tung and Bak Klang in the province; they were selling young men to work in Thailand under slavery-like conditions. In mid-December 1997, the Cambodia Office and LICADHO were informed of the existence in Koh Kong of up to 100 young men and boys awaiting transportation to Thailand. The allegations were investigated;

interviews with local people and victims of trafficking who had returned from Thailand confirmed the allegations and made clear that this trade had been in operation for at least two years. Many people in the area knew about the trafficking and other victims, including children, had been found. It was reported that some policemen were directly involved.

139. At the time of discovery of the network, it was estimated that hundreds of people were being trafficked to Thailand every month. The victims were usually young men in their teens or twenties, desperate, mostly illiterate, and vulnerable to the lure of promised employment over the border because of the pressure of poverty. The young men and boys found in Koh Kong come from various provinces in Cambodia, and had for the most part been approached by traffickers in their home villages.

140. The traffickers exploit the ignorance and poverty of their victims to persuade them to go. Some village boys are encouraged by their own families, and awareness of the prospects in such circumstances seems to be low in many areas of the country. One village chief told the staff of the Cambodia office that he had tried to warn his fellow villagers not to respond to such offers of work, but with little success. The traffickers usually take their victims from the villages to Srae Ambel or Sihanoukville from where they take the boat to Koh Kong. On arrival they take their money away from them. Traffickers usually sell the victims to Thai recruiters for around 1,000-4,000 baht (about $20-80), depending on the strength and physical condition of the individual. Often victims cannot be sold immediately, in which case they are compelled to remain in Koh Kong and find work to survive, often physical labour for the traffickers in conditions of semi-slavery.

141. Those who are taken to Thailand cross the border on a temporary pass which allows them a 24-hour visit. Some of the victims interviewed said they had worked clandestinely in Thailand, mostly in fisheries and logging. Others had been arrested by the Thai police after having worked for a while or right after they crossed the border. They had been taken to a detention centre, then to the tribunal in Trat province which had fined them and, as they had no money, condemned them to imprisonment. At the time of the interviews, it was reported that more than 150 Cambodians were being held in Trat prison and 60 others in smaller detention centres.

142. Many of those who have returned gave accounts of harsh working conditions. The workers are paid very little - the equivalent of $10 per month or less - and are compelled to work long hours. In some cases the Cambodian workers had been arrested before getting any pay at all and had later been unable to recover the money. Several returnees said that they had been drugged with "yama" or amphetamines put, without their knowledge, in drinking water or food, which temporarily increases the capacity for work but tends to be addictive.

143. When in Koh Kong in January 1998 the Special Representative met the Governor, H.E. Rong Plamkesan, and the Provincial Police Commissioner and received assurances that the main traffickers would be arrested and prosecuted. The Police Commissioner recognized that some policemen had indeed been involved in the trafficking. He had sent the names of four ringleaders to the Ministry of Interior. The Special Representative was told that the main culprits had fled to Thailand in order to avoid arrest. Further

interviews, however, indicated that some of those responsible might still be in the province. The Special Representative discussed this issue with H.E. You Hokry, one of the co-Ministers of Interior, who pledged further vigilance on the part of the Government. The Special Representative welcomes this determination and recommends that the Royal Government seek further international cooperation, with Thai authorities and international organizations, in order to put an end to the trafficking in human beings.

K. Ethnic minorities

144. The Special Representative has expressed concern about the situation of the ethnic Vietnamese in Cambodia. They are attacked verbally by the Khmer Rouge and others in an attempt to gain popular support. This type of xenophobic demagogy is damaging and potentially dangerous. On 7 January 1997, an explosive device was found near an area frequently visited by ethnic Vietnamese and near the home of a military attaché of the Vietnamese Embassy. Fortunately, the device could be disarmed.

145. Ethnic Vietnamese in Cambodia who have advocated more freedom in Viet Nam also appear to have been under scrutiny by Cambodian authorities. On 18 November 1997, the President of Hoi Dong Phuc Vu Quoc Dan Viet Nam (Committee for the Service of Vietnamese People), which advocates peaceful means to achieve more freedom in Viet Nam, was deported to Viet Nam where he was imprisoned. The circumstances of his deportation were questionable, especially in view of the existence of documents recognizing him to be a Cambodian national. The Kingdom of Cambodia is a signatory to the Convention relating to the Status of Refugees which prohibits the deportation of any individual who may face political persecution.

146. The Special Representative recognizes the importance of a climate of tolerance for all ethnicities in the Kingdom and urges the Cambodian authorities to respect and protect the rights of ethnic Vietnamese. He also appeals to all political parties to avoid propaganda which may incite hatred against any minority.

147. Indigenous peoples, also referred to as Highland Peoples, Khmer Loeu, Hill Tribes or Montagnards, make up about 1 per cent of Cambodia's population and live mostly in the north-eastern provinces of Ratanakiri, Mondulkiri, Stoeung Treng and Kratie, but also in Pursat, Koh Kong, Kompong Thom, Kampot, Preah Vihear and Kompong Speu. The main indigenous peoples of the north-east are the Tampuan, Kreung, Jarai, Brao, Kachak, Kaveth, Lun, Phnong, Ide, Stieng, Thmon, Kraol, Rahong, Kuy, Tamoan, Mil and Khaonje. The identity of these communities, their cultures and their traditional way of living are seriously at risk.

148. The Highland Peoples have a special relationship to their land, and their livelihood depends directly on swidden cultivation and the collection of non-timber forest products. However, they have no formal rights or title to land, and there are currently no legal, administrative or technical frameworks or procedures to ensure land tenure for them which are in accordance with their way of living.

149. The presence, citizenship and land use of the Highland Peoples have been disregarded in many government decisions. Logging concessions and concessions

for industrial plantations have been granted on lands and forests which have been inhabited and used by Highland Peoples for many generations. Plans have been made, in cooperation with the National Mekong Committee and the Asian Development Bank, to construct several dams on tributaries of the Mekong by which major reservoir lakes will be created, flooding lands traditionally inhabited and used by Highland Peoples. For none of these projects and plans have the Highland Peoples been consulted or given their agreement.

150. Furthermore, NGOs testify that both legal and illegal logging, often under the protection of military or police forces, severely undermines the livelihood basis of the Highland Peoples. Persons trying to monitor illegal logging activities are threatened and intimidated. Purchase and leasing by outsiders of land and forests used by Highland Peoples, with the involvement of local authorities, result in the fragmentation and weakening of the Highland Peoples' communities. The large-scale deforestation has already had a clearly negative environmental impact, which in turn threatens the Highland Peoples and other Cambodians as well.

151. Appropriate health care is hardly available and education adapted to the needs of the local communities is not provided. Information about development plans and options is not accessible to the Highland Peoples, who have little possibility to voice their needs, interests and aspirations. Their isolation, poverty and lack of self-organization makes them vulnerable to interventions and exploitation by outsiders. The justice system does not function for their benefit.

152. The Special Representative, however, commends the work of the Inter-Ministerial Committee which, in cooperation with the Cambodia office, has prepared a draft National Policy on Highland Peoples' Development, integrating international human rights standards. He recommends that this document be submitted soon to the Council of Ministers for approval and implementation. Furthermore, he recommends that the Royal Government accede to ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, which provides a useful framework for a national policy on this issue. The Special Representative also commends the Land Rights Action Research Project in Ratanakiri of the human rights NGO ADHOC (Associations des droits de l'homme et du développement au Cambodge), planned in cooperation with the Governor of Ratanakiri, the Provincial Land Titles Department, UNDP/CARERE (Cambodian Resettlement and Regeneration project) and the Non-Timber Forest Products Project, to which the Cambodia office is also giving support.

153. The Special Representative urges the Government to officially recognize the presence and citizenship of the Highland Peoples, as well as their use of land, forests and other natural resources, and their distinct and unique identity, culture and way of living. Cambodian identity cards should be issued to them. The role of indigenous peoples in managing and preserving forests and biological diversity should be recognized. The Government should protect the integrity of highland villages and their boundaries, as well as their lands and forests, against encroachment by outsiders. The Special Representative recommends that villages, lands and forests used by the Highland Peoples be clearly mapped and preserved from any current and future commercial concession or similar use. Local commune forestry projects should be recognized and supported. Public and private projects should only take

place after due consultation with the peoples affected, and social, environmental and cultural impact assessment studies have been carried out.

III. IMPLEMENTATION OF NEW AND PREVIOUS RECOMMENDATIONS

154. The Commission on Human Rights in resolution 1997/49 and the General Assembly in resolution 52/135 expressed concern about the serious problem of impunity in Cambodia, in particular with regard to unlawful acts by the military and the police. As is clear from the present report, this issue has been a major theme in the work by the Special Representative. He has pointed out that limited personnel and economic resources have contributed to the serious problems within the court system. The United Nations Judicial Mentors Programme has been a constructive contribution to improvements. The Special Representative has appealed for more assistance for justice reform in Cambodia. Bilateral cooperation, mainly with Australia and Japan, has been valuable.

155. The fact that the Supreme Council of Magistracy finally was convened in December 1997 was welcomed by the Special Representative. This body will, according to the Constitution, oversee the functioning of the judicial system and make appointments to the judiciary. Hopefully, this development will in future protect the judiciary from political pressure, intimidation by military officers and corruption. Clearly, decisive measures are still needed to establish genuine independence of the court system.

156. The General Assembly recommended the repeal of article 51 of the 1994 Law on Civil Servants, which has been mentioned by the Special Representative as an obstacle to the principle of equality of all persons under the law. This section of the law provides that, except in cases of flagrante delicto, no civil servant may be arrested or prosecuted for any crime unless the concerned minister gives his consent in advance. The impact of this provision has been clearly negative and judges have told the Special Representative about their frustration with article 51. The Minister of Justice has indeed proposed an amendment but no action has been taken to that effect.

157. Serious crimes with a political connotation, including assassinations, have not been clarified. Still, no one has been arrested or prosecuted in the cases of the killing of four journalists in recent years and of the grenade attack against the BLDP meeting in September 1995. The commission set up to investigate the grenade attack against the KNP demonstration on 30 March 1997 has issued no official report and no one has been arrested or charged for this crime. In the opinion of the Special Representative, this pattern of impunity in politically related criminal cases threatens the freedom of expression.

158. The call by the General Assembly, the High Commissioner for Human Rights and the Special Representative for serious investigations into the executions in July/August 1997 has not resulted in a comprehensive inquiry into these killings or in prosecutions in the individual cases. The Special Representative has expressed deep concern about this inaction.

159. Prison conditions continue to be very poor and the problem of the delayed payments of allocations for food and necessities to prisons from the State budget remains unresolved. The co-Ministers of Interior have, however, opened a constructive discussion on these problems with the

Special Representative and have suggested further international assistance for prison reform. An Australian aid project in this field has been appreciated.

160. The problem of torture was raised in a letter of 11 November 1997 by the Minister of Justice commenting upon the report to the General Assembly. The Minister assured the Special Rapporteur that the Ministry had paid the highest attention to the problem. This is welcomed though the Special Representative also has to report that he has received further information indicating that torture still occurs at a number of police stations.

161. Two pieces of legislation necessary for the 1998 national elections were passed by the National Assembly, one on political parties and the other on the election system. A standing National Electoral Committee was appointed in late January 1998, a draft law on the Constitutional Council was submitted to the Assembly and the election date has been set. However, essential steps are still required to ensure that the elections will be genuinely free, fair and credible. The Special Representative has, in particular, pointed at the need to ensure that all political parties and candidates could make their voices heard without intimidation all over the country. He has also stressed the importance of free and equal access to the media. Determined steps to end impunity are also needed in order to create an open and safe election atmosphere and to encourage all politicians in exile to return home. Such politicians should be guaranteed "freedom from arrest and detention in respect of acts done and words spoken prior to their return", as stated by H.E. Ung Huot and H.E. Hun Sen to the United Nations Secretary-General in October 1997.

162. The Royal Government has reacted positively to the proposal by the Special Representative, and supported by the General Assembly, about international assistance for the purpose of assisting Cambodia in responding to past serious violations of Cambodian and international laws. This is in response to a letter by the two Prime Ministers on 21 June 1997 which requested support for bringing to justice those persons responsible for the genocide and/or crimes against humanity during the rule of the Khmer Rouge from 1975 to 1979. The Special Representative is presently preparing a proposal on this issue.

163. The conditions of workers in the garment and other industries are still of concern. The Labour Code is not respected in a number of factories in Phnom Penh and the authorities delay registration of new trade unions.

164. The Special Representative is concerned about the lack of progress in the field of women's rights. The drop-out rate of girls from school is high, especially at secondary level. Women are victimized through domestic violence and their access to public health facilities is insufficient. There is no genuine encouragement of women's participation in political and public life.

165. The Government has submitted its report on the implementation of the Convention on the Rights of the Child. Major efforts are, however, needed to remedy problems in the field of education, to reform the system of juvenile justice, to put an end to the practice of recruiting minors for the armed forces and to combat other hazardous child labour, including child prostitution.

166. There have been police actions against persons organizing prostitution, including child prostitution, in Phnom Penh but further measures are needed to protect young people from being exploited and to rehabilitate children who have gone through such an ordeal. The Special Representative is particularly concerned about the frequency of HIV infection among prostitutes, including young ones, and the lack of preventive and social action to address this acute problem. The Special Representative has had constructive cooperation with the Ministry of Interior on the issue of trafficking in persons. During his visit to the province of Koh Kong in January 1998 the provincial authorities promised strong intervention against such criminal trade in human beings.

167. The Special Representative welcomes Cambodia's endorsement of the international treaty banning anti-personnel landmines in December 1997. However, the draft law prohibiting anti-personnel landmines at the domestic level was, at the time of writing, still not adopted by the National Assembly. Stiff penalties are set out to punish violators possessing, using, producing, trading in, importing or exporting mines. The Special Representative urges the National Assembly to consider this law as an absolute priority to ensure that no landmines will ever be laid again in Cambodia. The adoption of this law might also facilitate the mobilization of funds from the international community for the enormous and expensive task of demining.

IV. CONCLUDING REMARKS

168. The Special Representative, in line with his mandate, has maintained contact with the Government and people of Cambodia. During his two recent visits he met government representatives and officials as well as representatives of political parties, non-governmental organizations and trade unions. Also, the Special Representative has taken note of a written comment by H.E. Ung Huot and H.E. Hun Sen dated 18 November 1997 on the report to the General Assembly (A/52/489). The discussions with government representatives have for the most part been constructive, though the Second Prime Minister made negative public remarks in late January 1998 about United Nations human rights work in Cambodia. It was agreed that the Special Representative would meet with the Second Prime Minister during his next visit.

169. In order to fulfil his second task, to guide and coordinate the United Nations human rights presence in Cambodia, the Special Representative has stayed in constant touch with the Cambodia office of the United Nations High Commissioner for Human Rights. The office assists him during his visits in Cambodia as well as during their preparation and follow-up. The visit by the High Commissioner for Human Rights in January 1998 was coordinated to coincide with the presence of the Special Representative.

170. During his visits the Special Representative met with the Representative of the Secretary-General for Cambodia, Mr. Lakhan Mehrotra, and other key representatives of the United Nations system, including UNDP, UNICEF, UNHCR, WFP, ILO and UNESCO. In view of the forthcoming elections it is important that the human rights programme is coordinated with other related United Nations efforts. In January 1998, the Special Representative discussed with UNICEF, WHO, ILO, IOM and UNDP the possibility of establishing an inter-agency task force to coordinate international support for Cambodian efforts to combat child prostitution and trafficking.

171. The third task of the Special Representative is to assist the promotion and protection of human rights in Cambodia. The present report is part of that endeavour. He has also contributed by raising concrete problems directly with the authorities at the central and provincial levels. The cooperation with the Ministry of Interior has been particularly constructive. Furthermore, the Special Representative has argued for international assistance for the promotion of human rights in Cambodia - for reforms of the court and prison system, education and training of law enforcement personnel, reform of the school system, support to non-governmental organizations, etc.

172. Although the intention is constructive, it is in the nature of reports such as the present one that there will be a focus on critical and negative aspects. There have also been strong reasons for concern on a number of issues as spelled out in this report. At the same time, the Special Representative emphasizes that he has encountered much good will and many persons, within the Government and the judiciary as well as in the non-governmental sector, who perform heroic work for the improvement of the human rights situation of Cambodia. They contribute to genuine progress.